

**RIGHTS-OF-WAY USE AGREEMENT**

This Rights-of-Way Use Agreement (the "Agreement") is executed as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between TCG Maryland, a New York general partnership, and THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, (the "City"), a municipal corporation.

**WITNESSETH**

WHEREAS, TCG Maryland will offer telecommunications services to customers located in Rockville, Maryland; and

WHEREAS, TCG Maryland desires to place communications facilities underground within conduits, ducts, mains and/or pipes and overhead on poles, which communications facilities are or will be located under and on rights-of-way controlled by the City; and

WHEREAS, the City is willing to permit, under certain conditions set forth herein, the construction of a communications system and placement of communications facilities on the rights-of-way controlled by the City.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

1. Before constructing or placing communications facilities on or in the rights-of-way controlled by the City, TCG Maryland shall make application in the form of Exhibit "A" and receive a permit therefor in the form of Exhibit "B." Prior to making application pursuant to this paragraph, TCG Maryland will: A) in the case of construction of new conduits or erection of new poles, provide notice to other utility companies having a right-of-way in the same location in which TCG Maryland wishes to place its telecommunication facilities, or B) in the case of locating new cable in existing conduits or on existing pole space, obtain a conduit occupancy agreement or a pole attachment agreement from the owner of the conduit or poles. TCG Maryland shall construct its facilities so that they do not interfere with the existing facilities of other utility companies. Any cot markers used by TCG Maryland shall be flush-type cot markers and shall be approved by the City's Department of Public Works.
2. The City will use its best efforts to approve or deny any applications within thirty (30) business days after receipt.
3. TCG Maryland will be responsible for all site survey and other engineering costs. TCG Maryland will pay the then current City permit fee at the time of filing the application for any required permit. TCG Maryland shall also comply with all applicable City ordinances with respect to the posting of the surety bond described in Article 14 hereof.

4. Upon application for a permit for installation of underground conduit, TCG Maryland will provide the City with specifications regarding conduit materials, which specifications shall meet the City's reasonable requirements as to such materials. Subsequent to permit approval, TCG Maryland will notify the City at least 48 hours in advance whenever work is proposed which will interfere with or cause damage to any portion of the public right-of-way.
5. TCG Maryland will join "Miss Utility;" will comply with the "Miss Utility" notice requirements, and will provide to the City evidence of having joined "Miss Utility" before the City will issue any permit.
6. TCG Maryland will comply with applicable federal, state, county and City laws, including but not limited to any ordinance imposing franchise fees, rental fees, etc.
7. TCG Maryland will maintain all facilities constructed or installed pursuant to the permits issued under this Agreement in safe condition and in good repair.
8. Prior to commencement of construction, TCG Maryland shall post or shall cause to be posted notices of such construction along the City right-of-way where the construction will take place. The notices shall include a local or toll-free telephone number for residents to call with questions or complaints regarding the construction work. TCG Maryland will maintain a log of any complaints received and will provide the City with a copy of such log upon request. During construction TCG Maryland will take all necessary precautions to protect persons and property against injury. After construction, TCG Maryland will restore the rights-of-way to substantially the same condition as existed prior to construction. Upon completion of construction, TCG Maryland shall provide to the City two (2) complete sets of copies of all "as-built" plans for the telecommunications facilities in paper and one set in an electronic format compatible with the City's GIS system.
9. It is expressly understood by TCG Maryland that this Agreement and any permits issued hereunder do not create or vest in TCG Maryland any easement or other ownership of real property rights on the rights-of-way. This Agreement and the permits are in the nature of a non-exclusive license which is revocable by the City to the extent such revocation is necessary to protect the public health, safety and welfare. Except as otherwise provided in Articles 10 and 16 hereof, prior to any such revocation, the City will provide TCG Maryland with as much written notice as possible, but in no event less than ninety (90) days.
10. If TCG Maryland shall be in breach of any provision of this Agreement or a permit issued hereunder, the City will provide TCG Maryland with a written notice of default specifying the alleged breach. TCG Maryland shall have thirty (30) days from receipt of notice to cure such breach, provided that if the breach, by its nature cannot be cured within said thirty (30) days, TCG Maryland shall not be in default if it commences curing within said thirty (30) days and thereafter continuously and diligently pursues the cure to completion. If TCG Maryland fails to so cure the

breach, the City may declare TCG Maryland in default and revoke the relevant permit or permits upon ten (10) days advance written notice to Ms. Deborah Tulipano, OSP Manager, Network Engineering, TCG Maryland, 7777 Leesburg Pike, Suite 100N, Falls Church, Virginia 22043.

11. TCG Maryland shall indemnify and hold harmless the City from and against any and all losses, claims, suits or demands for damages to property or persons arising out of TCG Maryland's use of the rights-of-way, unless such loss, claim, suit or demand for damages is caused by the gross negligence or willful misconduct of the City, its employees, agents or contractors.
12. TCG Maryland, at its expense, will carry and keep in force and effect during the term of the contract including all extensions, commercial general liability insurance, automobile liability insurance and excess/umbrella liability insurance that will name the City as an additional insured and will protect the parties against losses, claims, suits, or demands for damages to property or persons arising out of TCG Maryland's use of the rights-of-way, with a combined single coverage limit of not less than Two Million Dollars (\$2,000,000.00). TCG Maryland will also carry and assign a waiver of subrogation for workers' compensation and employers' liability insurance at statutory minimums.

Endorsements reflecting the Mayor and Council of Rockville as an additional insured are required to be submitted with the insurance certificate. TCG Maryland's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, consultants, agents and employees and any insurance or self-insurance maintained by the City, shall be excess of TCG Maryland's insurance and shall not be called upon to contribute with it. TCG Maryland will provide 45 day written notice of any change in insurance coverage.

13. TCG Maryland shall not assign or transfer this Agreement without the written consent of the City, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, TCG Maryland may assign this Agreement without the consent of the City to an entity that controls, is controlled by, or is under common control with, TCG Maryland; however TCG Maryland shall provide the City notice of such assignment. Furthermore, nothing in this provision shall be construed as prohibiting TCG Maryland from entering into secured financing arrangements involving the communications systems or facilities.
14. In installing its facilities TCG Maryland shall satisfy all of the applicable provisions of Chapter 21 of the Rockville City Code, entitled "Streets and Public Improvements" (the "Road Code"). Prior to the issuance of any permit by the City TCG Maryland shall furnish a performance bond in form satisfactory to the City, and in an amount to be determined in accordance with the Road Code provisions governing such bonds, as security for the commitment of TCG Maryland to satisfy the Road Code and to otherwise perform the installation in compliance with this Agreement. Such bond

shall be released upon the expiration of ten (10) years after completion of construction, final inspection and acceptance of same by the City.

15. Failure of either party to enforce or insist upon compliance with any provision of this Agreement shall not constitute a waiver of such provision by such party.
16. Should a conflict arise between a TCG Maryland facility and an existing or proposed City facility, then TCG Maryland shall at its sole expense, relocate or eliminate said conflicting TCG Maryland facility upon written notice from the City to do so and said relocation or elimination shall be completed as soon as practicable after receipt of said notice, but under no circumstances more than sixty (60) days thereafter, unless an extension of the sixty (60) day limit is specifically granted in writing by the City. The City shall use good faith efforts to designate locations for any relocated facilities that will permit TCG Maryland to continue to serve its existing customers. Notwithstanding the foregoing, TCG Maryland shall not be required to pay to the City any permit fees in connection with a relocation required by the City under this Article 16.
17. In the event TCG Maryland chooses to extend its network beyond the initial design, TCG Maryland shall obtain City approval for such extension, including but not limited to applying for and obtaining any necessary permits.
18. Subject to Article 13, this Agreement shall extend to and bind the successors and assigns of the parties hereto.
19. Notice required under this Agreement will be addressed as follows:

If to the City:

City Manager  
Rockville City Hall  
111 Maryland Avenue  
Rockville, Maryland 20850

With a copies to:

Telecommunications and IT Operations Manager  
Rockville City Hall  
111 Maryland Avenue  
Rockville, Maryland 20850

Director of Public Works  
Rockville City Hall  
111 Maryland Avenue  
Rockville, Maryland 20850

City Attorney  
Rockville City Hall  
111 Maryland Avenue  
Rockville, Maryland 20850

If to TCG Maryland:

Mr. Christopher J. Och  
Manager – ROW/Network Engineering  
One AT&T Way  
Office – 4B129F  
Bedminster, New Jersey 07921

With a copies to:

AT&T Legal Department  
One AT&T Way  
Office –  
Bedminster, New Jersey 07921

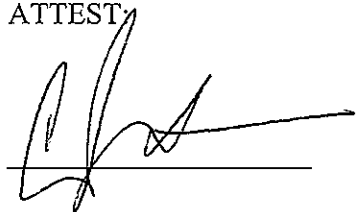
Ms. Deborah Tulipano  
OSP Manager, Network Engineering  
TCG Maryland  
7777 Leesburg Pike, Suite 100N  
Falls Church, Virginia 22043

Notices shall be mailed to the addressee by registered or certified mail, return receipt requested, with postage prepaid, or delivered by reputable courier service, with signed evidence of receipt, and shall be deemed delivered when received or refused by the addressee.


21. TCG Maryland shall provide to the City's Department of Public Works 24-hour, 7-day per week emergency contact information. This information shall include the emergency contact's name, title, phone number, cellular/mobile phone number, e-mail address, and mailing address. Updated information shall be provided whenever it changes. If TCG Maryland fails to provide the information required in this paragraph 21, the City shall be relieved of any liability for any and all reasonable actions it takes to handle an emergency situation, and TCG shall reimburse the City for any and all reasonable additional expenses the City incurs as a result of the failure of TCG to provide the information required in this paragraph 21.
22. This Agreement shall be governed by the laws of the State of Maryland. The parties agree that any litigation arising from this Agreement shall be brought in the Circuit Court for Montgomery County, Maryland, to the extent such court has jurisdiction, and the parties hereby waive any objection to venue in such court.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ATTEST:



TCG MARYLAND

By: 

Name: Michael E Todd

Title: Director CES

ATTEST:

THE MAYOR AND COUNCIL OF ROCKVILLE

Claire F. Funkhouser, City Clerk

By: \_\_\_\_\_, City Manager